



SIERRA
CLUB

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October 16, 2014

Curt Spalding
Regional Administrator
Environmental Protection Agency Region I
5 Post Office Square – Suite 100
Boston, MA 02109-3912

Dear Administrator Spalding:

Thank you for meeting with us on September 3, 2014, to discuss a number of matters of great importance to the Sierra Club and to residents of Eliot, Maine, who are impacted by the Schiller coal-fired electricity generating units in Portsmouth, New Hampshire. In addition, thank you for discussing water impacts from the Mt. Tom plant in Massachusetts and the status of its NPDES permit.

This letter is to follow up on our conversation, provide additional information and request a meeting with your air staff to explore whether we can come to a resolution regarding when EPA will act on Sierra Club's Petition to object to the Schiller plant's Clean Air Act Title V permit. We would be available for a meeting to discuss the Schiller Title V petition to object later this month.

I. PSNH's Schiller Plant

A. The Town of Eliot, Maine's Section 126 Petition

At the September 3 meeting EPA informed residents of Eliot, Maine and Sierra Club that EPA would not take action on Eliot, Maine's Section 126 Petition at this time. Instead EPA and/or state air regulatory agencies for Maine or New Hampshire will install an air monitor in Eliot, Maine. At the meeting EPA also stated that it has made no decision to take action on the 126 Petition, nor has it yet formed plans to take action, whether on the Section 126 petition or otherwise, should the monitor record exceedances of minimum federal ambient air quality standards in Eliot, Maine.

Eliot, Maine filed the petition with EPA pursuant to section 126 of the Clean Air Act in the summer of 2013. Section 126 requires that EPA investigate and issue a finding within 60 days of the filing of the Petition as to whether the plant is significantly contributing to a violation of, or interference with, minimum national ambient air quality standards: If so, the plant must cease operations within 3 months of the finding unless it complies with new emission limits that resolve the issue. 42 U.S.C. §7426.

Eliot's petition to EPA included air dispersion modeling conducted by an independent third party that demonstrated that the Schiller plant was causing violations of the 2010 sulfur dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) in Eliot, Maine. To date that modeling remains uncontroverted. Indeed, when the modeling analysis was repeated to address critiques of the modeling proffered by Schiller's owner PSNH, the modeled impacts of the Schiller plant in the Town of Eliot *increased*. EPA has previously been provided the results of this subsequent modeling.

Nonetheless, at the meeting EPA explained that it was not going to take action on the Section 126 petition at the request of the Town of Eliot, and that it would be working with New Hampshire to place and operate a SO₂ monitor in Eliot. There appears to be some confusion here that EPA may want to clarify. The town's impression, as stated in the minutes of Town of Eliot, Board of Selectman's Meeting, July 24, 2014 indicate:

"...EPA would like Eliot to withdraw their petition because EPA was in the middle of modeling . . . [EPA was] already very late and that opens the EPA up to great liability as long as the 126 Petition was out there because anyone could demand an answer by the timeframe and/or bring suit against the EPA for not doing so . . . the quid pro quo was that the EPA would actually monitor the air quality in South Eliot for a year and Eliot would withdraw the Petition."

As you know, Eliot's Selectmen determined that they lacked the ability to withdraw the Petition absent a town vote such as the one that authorized the submission of the Section 126 petition in the first instance. *Id.* We request EPA clarify in writing its stance to the town that EPA does not want the town to withdraw the petition, and to provide a copy of the press release EPA informed us it had issued after reading the media coverage on this matter.

EPA's actions here are concerning on a number of levels. As EPA has stated on numerous occasions, air monitoring is neither as accurate nor as reliable as modeling. Final SO₂ Rule, 75 Fed. Reg. at 35,553 ("[E]PA has determined that it is appropriate and efficient to principally use modeling to assess compliance for medium to larger sources, and to rely more on monitoring for groups of smaller sources and sources not as conducive to modeling.") More specifically, with regard to the short-term one-hour SO₂ standard, dispersion modeling of stationary sources is especially important and "more technically appropriate, efficient, and effective than [monitoring] because it takes into account fairly infrequent combinations of meteorological and source operating conditions that can contribute to peak ground-level concentrations of SO₂." Final Rule, 75 Fed. Reg. at 35,554. EPA specifically notes that, "[e]ven an expansive monitoring network could fail to identify all such locations." See Final Rule, 75 Fed. Reg. at 35,554.

Thus, the record demonstrates that: 1) EPA has failed to comply with its statutory duty to protect the town of Eliot from air pollution from the Schiller plant by a date certain, and has now missed its statutory deadline for responding to the Town of Eliot's Section 126 petition by nearly a calendar year; 2) EPA appears to have misrepresented the basis for its proposed course of action to residents of Eliot and to Sierra Club by claiming that the proposal to install a monitor and have Town of Eliot withdraw its petition originated with the Town rather than EPA; 3) EPA has proposed to Eliot that rather than comply with the time frame and procedure set forth in Section 126 of the Clean Air Act for responding to a Section 126 petition, EPA will adopt a suboptimal alternative of waiting to see if there are violations at a single location in Eliot where EPA will install a monitor—though there could well be violations in other areas in Eliot that the monitor will not detect; and 4) even if this lone monitor detects exceedances of the SO₂ national ambient air quality standard, EPA has not yet committed to take any specific action based upon these monitored exceedances.

Accordingly, we believe that it is critical that EPA both make data from the proposed monitor publicly available in real time, and make plain its intention to act expeditiously on any measured exceedances of the NAAQS, so that impacted residents do not have to wait further for redress of unhealthy and unsafe levels of SO₂ air pollution.

B. Sierra Club's Petition To Object To The Schiller Plant's CAA Title V Permit

The Sierra Club is likewise concerned about EPA's failure to protect the Town of Eliot and southern Maine generally from Schiller's SO₂ emissions by ensuring that the Schiller Plant's newly issued Clean Air Act Title V permit includes emission limitations sufficient to prevent exceedances of the SO₂ NAAQS in Maine. Indeed, although Sierra Club filed a petition with EPA to ask EPA to object to the permit on July 28, 2014 and EPA was required to act by September 26, 2014, as of today EPA still has not acted on Sierra Club's request to object to the Schiller Plant's Clean Air Act Title V Permit. Because of EPA's ongoing failure to act, on September 29, Sierra Club served EPA with a Notice Of Intent to sue EPA to compel action on the Sierra Club's petition to object to the Title V permit. Sierra Club is hopeful that we can resolve this litigation in the near future and would appreciate the opportunity to talk with EPA to explore this.

The CAA provides that permits issued under a Title V program "shall include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan." 42 U.S.C. § 7661c(a). Title V permits must contain all "those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance." 40 C.F.R. § 70.6(a)(1). Thus, the term "all applicable requirements" includes standards and/or requirements found in the State Implementation Plan ("SIP"). See also 40 C.F.R. § 70.2(1) (defining "applicable requirements" to mean "[a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA"). Indeed, EPA may not even approve a Title V permitting program unless it is persuaded that the permitting authority will "assure that upon issuance or renewal permits incorporate emissions limitations and other requirements in an applicable implantation plan." 42 U.S.C. § 7661a(b)(5)(C).

New Hampshire's state implementation plan—approved by EPA—forbids the Schiller plant from causing exceedances of the NAAQS in Maine. Specifically, the New Hampshire federally approved SIP provides:

The division shall apply special emission limits to stationary sources on a case-by-case basis to insure that their air quality impacts on adjacent states shall not interfere with the measures taken in those states to prevent significant deterioration of air quality and shall not prevent the attainment or maintenance of National Ambient Air Quality Standards in those states.

New Hampshire Approved SIP, Env-A 616.01.1 (emphasis added).

Again, uncontroverted air dispersion modeling conducted by an independent air dispersion modeler has determined that the emission rate allowed by the Title V permit authorizes emissions at levels that would cause massive exceedances of the SO₂ NAAQS in both New Hampshire and Maine. This modeling demonstrates the need for special emission limitations in the enforceable Title V permit for the Schiller facility that are sufficiently stringent to ensure that the plant's air quality impacts do not prevent the attainment or maintenance of the 1-hour SO₂ NAAQS in Maine.

C. The Urgency of EPA Action on The Petition to Object

Sierra Club emphasizes that these issues have very real consequences on public health. As EPA itself concluded in issuing the new SO₂ NAAQS in 2010, SO₂ has significant health impacts. EPA has determined that SO₂ exposure can aggravate existing heart disease, leading to increased hospitalizations and premature deaths. Env'tl. Prot. Agency, Sulfur Dioxide - Health, available at

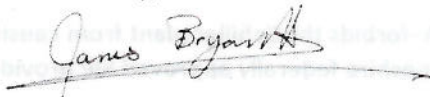
<http://www.epa.gov/oaqps001/sulfurdioxide/health.html>. Sulfur dioxide causes decrements in lung function, aggravation of asthma, and respiratory and cardiovascular morbidity. See Env'tl. Prot. Agency, EPA/600/R-08/047F, Integrated Science Assessment for Sulfur Oxides—Health Criteria ch. 5 tbls. 5-1, 5-2 (2008); Primary National Ambient Air Quality Standard for Sulfur Dioxide Final Rule, 75 Fed. Reg. 35,520, 35,525 (June 22, 2010) (hereinafter "Final Rule"); see also Env'tl. Prot. Agency, Our Nation's Air: Status and Trends Through 2008 4 (2010) (noting that the health effects of sulfur dioxide exposure include aggravation of asthma and chest tightness), available at <http://www.epa.gov/airtrends/2010/report/fullreport.pdf>. Further, short-term SO₂ exposure is especially risky for children with asthma. See Final Rule, 75 Fed. Reg. at 35,525. Indeed, EPA itself estimates that—if the SO₂ NAAQS are fully implemented—5,900 fewer people would die prematurely and 54,000 fewer asthma attacks would occur unnecessarily, not to mention health costs being greatly reduced: EPA estimated that the net benefit of implementing the 75 ppb SO₂ NAAQS was up to \$36 billion dollars. 75 Fed. Reg. 35,520, 35,588 (June 22, 2010).

Put simply, the people of Eliot and of Southern Maine are entitled to the public health protections that the SO₂ NAAQS promises.

D. The Schiller Plant's NPDES Permit

We appreciate that your water permitting office has taken steps to address Schiller's outdated NPDES permit. As you know, the permit—a five year permit—was last issued over 24 years ago, in September of 1990. However at our September 3 meeting, EPA stated that it had originally planned to issue a draft permit in October or November but a number of challenges with respect to privileged information from PSNH have caused delays. We expect those challenges have been resolved and look forward to the issuance of the draft permit.

Sincerely,



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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BOSTON, MA 02109-3912

OFFICE OF THE
REGIONAL ADMINISTRATOR

December 1, 2014

Mr. James Bryan McCaffrey
Senior Campaign Representative
Beyond Coal, New England
10 Milk Street, Suite 417
Boston, MA 02108

Dear Mr. McCaffrey:

Thank you for your letter dated October 16, 2014. I would like to acknowledge your concerns regarding air quality issues in southern Maine and assure you EPA regards this as a top priority. This letter is in response to your questions regarding Eliot, Maine's Clean Air Act section 126 petition and Sierra Club's petition to object to the Schiller Station Title V permit renewal.

Attached, I have provided the press statement we released on August 7, 2014 to Inside EPA reporter Stuart Parker, who was inquiring about a July 26, 2014 Portsmouth Herald article alleging that EPA asked Eliot town officials to withdraw their CAA section 126 petition.

As stated in the August 2014 press statement, during a June 2014 petition status meeting, members of the Eliot Board of Selectmen expressed an interest in collecting air quality monitoring data that could help inform the petition response. EPA, in partnership with Maine Department of Environmental Protection (ME DEP) and New Hampshire Department of Environmental Services (NH DES), considered options for accommodating this request and developed a tentative plan to site a temporary SO₂ monitor in the town. Subsequently, during a July meeting, EPA presented this plan to Eliot town officials, and they were generally supportive and interested in proceeding with SO₂ monitoring. At this meeting, EPA noted that it has a deadline to act on the Clean Air Act section 126 petition before the monitoring data would be available under this plan, and as a result could be required to act on the petition without data from the temporary monitor.

While EPA did not specifically ask the town to withdraw its petition, EPA pointed out that withdrawing this petition until the monitoring data was collected could address this potential timing concern. Town officials stated they would consider the timing concern, but ultimately decided to let the petition stand and pursue SO₂ monitoring.

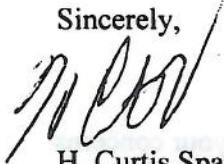
Through a collaborative effort between the Town of Eliot and our state partners, an air quality monitoring station has been sited in Eliot, and as of October 24, 2014 the monitor has been collecting data. ME DEP will publish weekly updates of observed SO₂ concentrations, wind

speeds, and associated wind direction from the Eliot monitor and the Pierce Island monitor, located in Portsmouth, New Hampshire. Updates will be published to the following URL: www.maine.gov/dep/ftp/ELIOT_SO2/. The monitor will help facilitate a better understanding of local air quality influences associated with emissions from Schiller Station. EPA is continuing to work on its response to the section 126 petition and will consider whether data from this monitor will affect our response.

With respect to your request to meet and discuss the response deadline for Sierra Club's Title V petition, we note that the Sierra Club has sent the Administrator a notice of intent to sue the EPA in connection to this petition. Your request to meet has been forwarded to EPA headquarters.

Again, thank you for your letter. If you have further questions please contact Ida E. McDonnell of my staff at 617-918-1653 or mcdonnell.ida@epa.gov.

Sincerely,



H. Curtis Spalding
Regional Administrator

**Eliot, ME CAA Section 126 Petition
August, 2014**

- In Sept 2013, the Town of Eliot, ME, submitted a Clean Air Act (CAA) section 126 petition to EPA alleging that SO₂ emissions from Schiller Station in Portsmouth, NH, are causing violations of the National Ambient Air Quality Standard – measured over 1-hour -- for sulfur dioxide (SO₂) in Maine.
- On Nov 8, 2013, EPA extended the deadline for acting on the petition to a date no later than May 8, 2014.
- At a petition status meeting in June 2014, members of the Eliot Board of Selectmen expressed an interest in collecting further air quality monitoring data that could help inform the petition response.
- EPA, in partnership with NH and ME, considered options for accommodating this request and developed a tentative plan to site a temporary air quality monitor measuring SO₂ in the town.
- At a follow-up meeting in July, EPA presented this plan and the town was generally supportive and interested in proceeding with the plan to conduct air quality monitoring. At this meeting, EPA also noted that it has a deadline to act on the current petition before the monitoring data would be available under this plan, and as a result could be required to act on the petition without the benefit of the additional monitoring data.
- While the EPA did not specifically ask the town to withdraw its petition, the EPA pointed out that withdrawing this petition until the monitoring data was collected would address this potential timing concern.
- The town officials indicated they would consider the idea of withdrawing the petition, but subsequent to a July 24 Board of Selectmen meeting, have stated that they do not wish to pursue withdrawal.
- EPA is continuing to work with the state agencies in ME and NH on siting a monitor to collect further SO₂ data.
- EPA is also continuing to work on its response to the petition and will consider whether the placement of a monitor should affect the timing of its response.

McKinley, Gobeail

From: Isabelle Riu <isabelle.riu@sierraclub.org>
Sent: Monday, September 29, 2014 3:38 PM
To: Spalding, Curt; Conroy, David; McDonnell, Ida
Cc: Zachary Fabish
Subject: Sierra Club's Notice of Intent to Sue under the Federal Clean Air Act
Attachments: Schiller Title V Petition to Object deadline NOI.pdf

Attached, please find Sierra Club's Notice of Intent to Sue under the Federal Clean Air Act.

Best,
Isabelle Riu

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